IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7946 of 1993

with

SPECIAL CIVIL APPLICATION No 5446 of 1996

For Approval and Signature:

HON'BLE MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

B C PATEL,JR SUPERITENDENT

Versus

THE REGISTRAR,SARDAR PATEL UNIVERSITY & ANR

Appearance:

1. Special Civil Application No. 7946 of 1993

MR ASIM PANDYA FOR MR VIJAY H PATEL for Petitioner No. 1

MR MITUL K SHELAT for Respondent No. 1

MR SIRAJ GORI, LD.AGP for Respondent No.2

2. Special Civil Application No. 5446 of 1996

MR ASIM PANDYA FOR MR VIJAY H PATEL for Petitioner No. 1

MR MITUL SHELAT for Respondent No. 1

MR SIRAJ GORI, LD.AGP for Respondent No.2

CORAM : HON'BLE MR.JUSTICE K.M.MEHTA

Date of decision: 01/12/2004

ORAL JUDGEMENT

1. B.C.Patel, petitioner, has filed this petition with a prayer that this Court may issue a writ of mandamus or a writ in the nature of mandamus or any other writ, order or direction, directing the respondents to pay pension to the petitioner immediately after his retirement i.e. from 30th September, 1993, on the basis of his pay-scale i.e. Rs.1640-2900 of Junior Superintendent.

2. The said petition was filed on 5th August, 1993. On 19th August, 1993, this Court has issued notice and further directed the respondents may consider the question of forwarding the pension papers in accordance with the extent rules. Thereafter on 18th August, 1994, the matter was admitted and thereafter the matter was placed for hearing from time to time. Matter is reached hearing for final hearing today.

3. The short facts giving rise to this petition are as under:-

3.1 The petitioner joined the service of Sardar Patel University - respondent No.1 herein as Senior Typist on 27th September, 1960. Thereafter the petitioner was promoted as Junior Superintendent on 1st October, 1991. Thereafter his pay was increased from time to time as per the pay-scale fixed according to the decision of the Pay Commission. At the relevant time the petitioner was drawing salary at the pay scale of Rs.1200-2040.

3.2 It is the case of the petitioner that the respondent No.1 University by its resolution dated 21st July, 1987, passed in its syndicate resolved that the old pay-scales of Senior Typists which was at Rs.330-560 which is equivalent to the Senior Clerk was revised at Rs.1200-2040.

3.3 The respondent University in its meeting of the Syndicate dated 27th September, 1991, resolved that a Committee was to be appointed to decide the following prayers unanimously made in the writ petition filed by one Ambalal Kashibhai Patel:

(i) restraining the University from promoting the senior clerks to the post of head clerks

ignoring seniority of senior typists.

(ii) restraining the University from promoting junior clerks to the posts of senior clerks ignoring the seniority of junior typists.

(iii) restraining the University from promoting the head clerks to the posts of Superintendent ignoring the seniority of Stenographer.

3.4 The respondent University by its resolution passed in its syndicate dated 7th December, 1991, resolved that the employees having designation of senior typists/ senior clerks-cum-typists/senior typists-cum-clerks should be given the designation of senior clerks from 1.1.86, and accordingly promotions should be given from 1.10.1991.

3.5 The petitioner has retired on 30th September, 1993, on account of superannuation. The petitioner by his letter dated 8th July, 1993, inquired of the respondent No.1 University about his pension file. The Assistant Registrar of the respondent University by his letter dated 26/28th July, 1993, informed the petitioner in response to his letter dated 8th July, 1993, that the State Government has approved the pay-scale of senior typists at Rs.950-1500 from 1.1.1986. However, the pay-scale of senior typists is equivalent to the pay-scale of senior clerk and on account of the resolution of the Syndicate senior typists is being paid the salary at the pay scale of Rs.1200-2040 from 1.1.1986.

3.6 It was further stated that a proposal was made to the State Government to approve the aforesaid pay-scale. However, the said proposal is not approved and once again the said proposal has been made. It was further stated that in the said letter that the salary which is being paid to the petitioner is not approved and the same is not acceptable for the calculation of the pension. The pension papers of the petitioner cannot be presented before the Pension Department of the Government.

3.7 It is the case of the petitioner in the petition that the petitioner was promoted to the post of Junior Superintendent on 1.10.1991 and the petitioner working on the post of Junior Superintendent since then and thereafter he has retired on 30th September, 1993. It is the case of the petitioner that the University has passed the resolution dated 1.1.1986 giving the designation of senior clerks to the senior typists/senior

clerk-cum-typists/senior typists-cum-clerk and thus the anomalies between the employees were removed.

3.8 It is the case of the petitioner that the pay-scale of senior typists was Rs.950-1500. However, the senior typists were designated as senior clerks by the respondent No.1 University and, therefore, they are given salary at the pay-scale of Rs.1200-2040 from 1.1.86 as per the resolution of the Syndicate of the respondent No.1 University. Therefore, the petitioner had become senior clerks by virtue of the said resolution passed by the Syndicate of the respondent University and accordingly the petitioner was promoted to the Junior Superintendent. The pay-scale of the Junior Superintendent is Rs.1640-2900 and accordingly the petitioner was drawing the salary at the scale of Rs.1640-2900 since 1.10.1991 and, therefore, the petitioner is entitled to get pension on the basis of pay-scale which is drawing Rs.1640-2900.

4. On behalf of the State Government, Mr.Gori, learned AGP has appeared. He has invited my attention to the affidavit-in-reply filed one Rekhaben P.Joshi, Under Secretary, Education Department, State of Gujarat, dated 19th October, 1993. He has invited my attention to para 4 and 5 of the affidavit-in-reply. From the affidavit-in-reply it has been stated that, as per recommendation of the 4th Pay Commission, the State Government has approved the pay scale of Rs.950-1500 to the post of the Senior Typist of all Universities vide Government Resolution dated 15.6.1987. As per the Sardar Patel University Act, 1955, section 23(4) the University has no power to regulate the salary scale and allowances of its employees on its own. This means and includes that the University has no power or authority of its own to revise or sanction pay scale of its employees without the approval of the State Government. The said sub-sec.(4) of Sec.23 is material and relevant reproduced as under:

> "...(4) The exercise of the powers by the Syndicate under clauses (xv) and (xxi) of sub-section (1), in so far as they relate to the laying down and regulating salary scales and allowances of officers, teachers and employees of the University shall be subject to the approval of the State Government."

4.1 The learned AGP therefore submitted that the petitioner was entitled to draw the salary in the pay-scale of Rs.950-1500 on the post of Senior Typist and

was not at all entitled to the pay-scale of Rs.1200-2040. It was further made clear that it is clearly admitted by the University as well as petitioner that the petitioner was appointed to the post of Senior Typist and not to the post of Senior Clerk or Senior Clerk-cum-typist and, therefore, even if the respondent has paid the petitioner his salary in the pay-scale of Rs.1200-2040 than the same is paid by mistake and the said payment being unauthorised can not be held to be valid pay scale to the post of Senior Typist, merely because the same is paid by the respondent University.

4.2 The learned AGP further stated that the Government appoints any pay commission for revision of pay-scales of different cadres, it is needless to say that the pay-commission takes into consideration the nature of duties and the responsibilities of the posts while fixing revising the pay-scales for all cadres. The present promotional steps for all are as under:

1. Junior Clerk/typist 950-1500
2. Senior Clerk 1200-2040
3. Head Clerk 1400-2600

4.3 Considering the above steps of promotion, University can give promotion to the petitioner as a Senior Clerk but not as a Head Clerk, but in the present case, University has given promotion to the petitioner directly as Head Clerk which is absolutely incorrect. The post of Head Clerk carries the pay scale of Rs.1400-2600. What is more worst is re-designation of the post of Head clerk as Junior Superintendents, as found from the affidavit of the respondent-University, and granting the pay-scale of Rs.1640-2900 to such re-designated Head Clerks.

4.4 It may be mentioned here that the post of Jr.Superintendent does not exist at all nor is recognised in the 4th Pay Commission for the respondent University and obviously when there is no such post recognised, the grant of pay-scale of Rs.1640-2900 to Head Clerks by re-designating the same as Jr.Superintendent is also consequently bad in eye of law. Thus, the claim of the petitioner that his pension should be calculated as per the pay-scale of Jr.Superintendent that is Rs.1640-2900 can not be accepted and deserves to be rejected at the threshold. Thus the grant of arbitrary pay-scales by the respondent University to its employees and the grant of arbitrary promotion from Senior Typist to Jr.Superintendent, jumping to two cadres itself is unjust, improper and illegal.

5. Mr.Mitul Shelat, learned advocate has appeared on behalf of the University. He has also relied upon the affidavit-in-reply filed by Chandrakant Mohanbhai Patel, Registrar of the respondent No.1 University. In the affidavit it was clearly stated that the petitioner was appointed as Senior Typist with effect from 27th September, 1960, in the scale of Rs.100-10-150. The said pay-scale was revised to Rs.220-450. The pay-scales of Senior Typist and Senior Clerk were equal and identical. The Desai Pay Commission recommended the scale of Rs.330-560 for both the said posts, and the said recommendations were effected with effect from 1st January, 1973. He further stated that the Third Pay Commission's recommendation regarding the revision of pay scales of University Employees was accepted by the State Government dated 15.6.1987 under which scales of Junior Typists and Senior Typists amalgamated in the scale of Rs.950-1500 while pay-scale of Sr.Clerk and Senior Typist-cum-Clerks were revised to Rs.1200-2040.

5.1 He has further pointed out that the Syndicate of the Sardar Patel University at its meeting on 21st January, 1987, resolved that, as there is an anomaly in respect of the pay-scale granted to Senior Typist and Senior Clerk by the State Government, the said anomaly was required to be rectified and therefore recommended the identical pay-scale to Senior Typist. Pursuant to the said resolution dated 21st July, 1987, the employees occupying the posts of Senior Typists have been awarded salary in the scale of Rs.1200-2040. The University had represented the case to the State Government for consideration. However, the State Government has not approved the scale of Senior Typist vide their letter dated 31.5.1998. Hence, the Government Auditor has raised audit objection.

5.2 It was further stated that the Syndicate in its meeting held on 7th December, 1991, has also further recommended promotional opportunity to Senior Typists and Senior Clerks considering the common seniority list of Senior Clerk and Senior Typists for further promotion to the post of Head Clerk. The posts of Head Clerks were designated as Junior Superintendents by the resolution of Syndicate dated 26.8.1989. The post of Head Clerk carried the scale of Rs.1400-2600., while the post of Junior Superintendent carried the scale of Rs.1640-2900. The posts of Head Clerks, now designated as Junior Superintendent carried the scale of Rs.1640-2900. The State Government did not approve the resolution regarding of designation of Head Clerk to Junior Superintendent.

It was stated that since the State Government has not approved the pay scale of Junior Superintendent i.e. Rs.1640-2900, the petitioner would be entitled to retiral benefits on the basis of the scale of pay of Head Clerk in the scale of Rs.1400-2600.

6. I have heard Mr.Asim Pandya, learned advocate for Mr.Vijay Patel for the petitioner. He has strenuously urged that it is no doubt true that the resolution of the University is subject to the approval of the Government but the State Government did not approve the same, and therefore, his contention is that the petitioner has in fact has worked as Senior Clerk and, therefore, he is entitled to the scale of Senior Clerk. It is stated that the University has taken the work from them as Senior Clerk and, therefore, in any event, they (i.e. University and State Government) are entitled to make the payment in this behalf. He has stated that though the resolution may be subject to approval of the State Government and the Government did not approve the same but the fact that petitioners had worked as Senior Clerk and therefore the petitioners are entitled to the same.

6.1 He has also referred to the rejoinder filed by the petitioner in this behalf and stated that petitioner was promoted as Junior Superintendent in the scale of Rs.1640-2900 and he has worked as Junior Superintendent also in all these years. The petitioner further referred to the affidavit-in-reply filed by the petitioner in Special Civil Application No.5446 of 1996 which was also heard together and in this case of Special Civil Application No.5446 of 11996 it is the case of the petitioner that all the petitioners have worked on the post of Senior Clerk and have also performed all duties of Senior Clerk and their work was not confined to typing only. Since the petitioners have performed all the work of Senior Clerk, the pension of the petitioners is required to be fixed accordingly irrespective of particular designation.

6.2 As regards promotion in 1990, they had filed Special Civil Application No.8365 of 1990 before this Court, and this Court by its order dated 30th August, 1991, directed the Syndicate to take appropriate decision regarding the grievances raised by the petitioners and the Syndicate by Resolution dated 7th December, 1991, considered the grievances of the petitioners favourably and the cadre of typist was considered at par with the cadre of clerk for the purpose of promotion to the higher post. He further stated that this contention is clearly supports to the case of the petitioners that their

pension is required to be fixed on the basis of pay scale available to Senior Clerk at the relevant time and the pay scale available to the petitioner for the post of Head Clerk when they retired.

6.3 Learned advocate further submitted that the Government has also passed the resolution dated 5th July, 1991, allowing the benefit of higher scale to all the Government employees if they fulfil the criteria laid down in the said resolution. The case of the petitioners fall in the criteria laid down in the said resolution dated 5.7.1991 as modified from time to time.

7. I have also heard Mr.Gori, learned AGP for the State. He has also reiterated and relied upon the affidavit-in-reply filed by the Government. I have also heard Mr.Mitul Shelat, learned advocate appears on behalf of the University. He has also reiterated and relied upon the affidavit-in-reply filed by the University. I have considered the case of the petitioner in light of the fact that, in this case, the Government has specifically stated that the appointment of petitioner is always subject to the approval of the Government for which the Government has relied upon Clause 4 of Sec.23 of the Act which I have referred earlier. This resolution specifically states that all appointments are subject to the approval of the Government. In this case the Government did not approve the same, and therefore no right confers or vested in the petitioner for higher benefits in this behalf. Merely because the petitioner has worked as Senior Clerk that does not confer the rights to obtain the higher pay scale. In fact the University has taken the stand and also informed the petitioners that the higher benefits will be given subject to the approval of the Government, and if Government did not approve the same, the petitioner can not get the higher benefits in this behalf. So from the very beginning the University has taken the firm stand that whatever the higher benefits the same will be subject to the approval of the Government and therefore now it does not lie on the mouth of the petitioners that they are entitled to the same. In view of the averments made by the Government as well as the University in the affidavit-in-reply and also gone through the averments made in the petition, I do no see any substance in the petition and, therefore, the contention of the petitioner has no merit, hence both the petitions are accordingly dismissed with no order as to costs.

8. However, on the equitable aspect, the petitioners have contended in the affidavit-in-rejoinder that they

have in fact worked as Senior Clerk, so they are entitled for the higher benefits in this behalf. However, that fact has not been considered by the Government or the University in this behalf because it was raised for the first time in the rejoinder. In view of the said fact, it will be open for the petitioners to make a detailed representation both to the Government and the University for claiming higher benefits, and it will be open for the Government as well as the University to consider the same kindly and sympathetically notwithstanding the fact that on the merits of the matter this Court dismissed the petition. The Government and the University will consider the fact that the petitioners had worked or not and on basis of evidence the petitioners lead. It will be open for the Government and the University to consider the plea of the petitioners in accordance with law kindly and sympathetically as and when petitioners make representation in this behalf. Rule is discharged with no order as to costs.

(K.M. Mehta, J.)

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